

Assembly Bill No. 1436

CHAPTER 707

An act to add Section 12300.3 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1436, Burke. In-home supportive services: authorized representative.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which qualified aged, blind, or disabled persons are provided with supportive services in order to permit them to remain in their own homes and avoid institutionalization. Existing law specifies that supportive services include, among other things, domestic services, personal care services, and paramedical services that make it possible for the recipient to establish and maintain an independent living arrangement.

This bill would authorize an applicant for, or recipient of, in-home supportive services to designate an individual to act as his or her authorized representative for purposes of the IHSS program. The bill would define "authorized representative" to mean an individual who is designated in writing, on a form developed by the State Department of Social Services, by an applicant or recipient to accompany, assist, and represent the applicant or recipient for specified purposes related to the program. The bill would require the form to specify the responsibilities to be performed by the authorized representative and to provide that the designation may be changed or revoked at any time by the applicant or recipient. The bill would also provide that the authorized representative has the responsibility to act in the applicant or recipient's best interest. The bill would exclude certain persons from serving as an authorized representative, including a person who is prohibited from being a provider of services following a conviction for, or incarceration following a conviction for, fraud against a government health care or supportive services program. The bill would require the department, in consultation with specified parties, including representatives of applicants for, and recipients of, services, to develop a form for this purpose, as specified. The bill would require a county to retain the original form that designates an authorized representative in the applicant or recipient's IHSS case file, and to provide copies of the form to the applicant or recipient and to the authorized representative. By creating additional duties for local officials, the bill would impose a state-mandated local program. The bill would authorize the department to implement and administer these provisions through all-county letters or similar instructions until regulations are adopted,

and would require the department to, no later than July 1, 2016, adopt emergency regulations.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 12300.3 is added to the Welfare and Institutions Code, to read:

12300.3. (a) For purposes of this section, “authorized representative” means an individual who is designated in writing, on a form developed by the department, by an applicant for or recipient of in-home supportive services pursuant to this article, to accompany, assist, and represent the applicant or recipient for purposes related to the program, including, but not limited to, the application process, direction of services, and redetermination of eligibility.

(b) An applicant or recipient may designate an individual to act as his or her authorized representative for the purposes described in subdivision (a) on a form that does all of the following:

(1) Specifies an effective time period, to be determined by the department.

(2) Specifies the responsibilities to be performed by the authorized representative.

(3) May be revoked or changed by the applicant or recipient at any time.

(c) The authorized representative designation pursuant to this section shall not authorize representation for an administrative hearing conducted by the department. An applicant or recipient shall comply with Section 10950 to designate an authorized representative for the purposes of an administrative hearing.

(d) The authorized representative shall have the responsibility to act in the applicant or recipient’s best interest, shall not have any other power to act on behalf of the applicant or recipient, except as specified in writing pursuant to this section, and shall not act in lieu of the applicant or recipient.

(e) (1) An applicant or recipient who has a legal representative with the legal authority to act on behalf of the applicant or recipient that includes decisionmaking authority for purposes reasonably believed to be related to the program, as described in subdivision (a), shall not be required to complete an authorized representative form, except for the purpose specified in subdivision (g).

(2) A legal representative may designate an authorized representative for the applicant or recipient in accordance with the requirements of this section.

(3) For purposes of this subdivision, a legal representative shall include both of the following:

(A) A court-appointed guardian or conservator.

(B) For an applicant or recipient who is a minor, a parent or other individual determined by the county human services agency to be the legally authorized decisionmaker for the applicant or recipient.

(f) (1) The following individuals shall not serve as an authorized representative for an applicant or recipient:

(A) An individual who is prevented from being a provider of services pursuant to Section 12305.81.

(B) An individual who is prevented from being a provider of services pursuant to Section 12305.87.

(2) The prohibitions described in paragraph (1) shall not apply to an individual described in subdivision (e).

(g) An authorized representative may sign timesheets or other provider-related documents for in-home supportive services on behalf of the recipient, if specified by the recipient on the authorized representative form. Notwithstanding any other law, an authorized representative who is a provider of services for the recipient may not sign his or her own timesheet on behalf of the recipient unless the authorized representative is an individual specified in subdivision (e). For administrative processing purposes, a legal representative specified in subdivision (e) shall complete an authorized representative form to sign timesheets or other provider-related documents for in-home supportive services on behalf of the recipient.

(h) (1) The department, in consultation with the State Department of Health Care Services, the County Welfare Directors Association of California, representatives of applicants for and recipients of services under this article, and representatives of providers of services under this article, shall develop a standardized statewide form and procedures for effectuating the designation of an authorized representative pursuant to this section.

(2) The standard agreement form shall include a notification regarding the requirements of this subdivision and a statement that by signing the agreement, the individual designated as an authorized representative agrees to abide by those requirements.

(i) When an applicant or recipient designates an authorized representative on the authorized representative form, the county shall retain the original form in the applicant or recipient's in-home supportive services case file. The form may be electronically retained. The county shall provide copies of the form to the applicant or recipient and to the individual designated as the authorized representative.

(j) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instructions from the department until regulations are adopted. The department shall adopt emergency regulations implementing these provisions no later than July 1, 2016. The department may readopt any emergency

regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations pursuant to this section and one readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State, and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.